

**MINUTES**

**MONTANA SENATE  
58th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN DUANE GRIMES**, on January 13, 2003 at 10:00 A.M., in Room 303 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Duane Grimes, Chairman (R)  
Sen. Dan McGee, Vice Chairman (R)  
Sen. Brent R. Cromley (D)  
Sen. Aubyn Curtiss (R)  
Sen. Jeff Mangan (D)  
Sen. Jerry O'Neil (R)  
Sen. Gerald Pease (D)  
Sen. Gary L. Perry (R)  
Sen. Mike Wheat (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 116, 1/9/2003  
Executive Action: SB 49, SB 29

**HEARING ON SB 116**

**Sponsor:** **SEN. MIKE COONEY, SD 26, HELENA**

**Proponents:** **Mike McGrath, Montana Attorney General  
Captain David Dill, Montana Highway Patrol**

**Kathy McGowen, Montana Sheriffs and Peace Officers  
Assoc., Montana County Attorneys Assoc.  
Troy McGee, Montana Assoc. of Chiefs of Police  
Dr. Michael Spence, State Medical Officer,  
Dept. of Public Health and Human Services  
Sami Butler, Montana Nurses Association  
Beta Lovitt, Montana Medical Association  
Dave Galt, Department of the Montana Department of  
Transportation  
Steve Yeakel, Montana Council for Maternal and  
Child Health  
John Flink, Montana Hospital Association  
Susan Good, Representing Anesthesiologist,  
Neurosurgeons, and Orthopedic Surgeons  
Roger Hagen, Self**

**Opponents: Steve White, Self**

**Opening Statement by Sponsor:**

**SEN. MIKE COONEY, SD 26, HELENA,** introduced SB 116 which was being brought by the request of the Department of Justice. This bill is commonly referred to as the mandatory seat belt law. When we have the knowledge that something put to proper use can help bring about a positive outcome, it is important for us to promote the well being of the whole. There are numerous examples where one must have completed certain educational requirements before they are licensed to provide services in many professions. Government takes these actions because it is believed to be in the best interest of the public.

This law would allow a law enforcement officer to write a citation whenever they observe an unbelted driver or passenger. The officer does not need any other reason to stop or cite an individual. Traffic crashes are one of the leading causes of death and serious injury in our country. Traffic crashes are one of the leading causes of work lost days for American industry. From 2000 to 2002, 682 people were killed in car crashes on Montana roadways. About 62 percent were not using seatbelts. In the year 2000, 142 people were killed on Montana roadways who were not using seatbelts. In 2001, 230 people died on Montana roadways, 179 drivers and passengers were not wearing seat belts. In 2002, 265 people were killed with 213 of these not wearing their seatbelts. These numbers do not take into account the hundreds of people who were seriously injured.

Society pays the costs of lost wages, productivity, emergency services, uninsured medical care, tax-supported rehabilitation programs, increased insurance fees, and many other costs. It is

estimated that each fatality results in lifetime economic cost to society of about \$977,000 per fatality. The vast majority of this total is workplace and household productivity. The economic impact for each incapacitating or major injury is approximately \$1.1 million per injury. National data from the 2002 report from the National Highway Traffic Safety Administration shows that traffic crashes also result in \$17 billion in medical care and emergency service expenses each year.

Primary seatbelt laws have a proven track record of dramatically increasing seatbelt use in this country. In Washington state the primary enforcement law took effect on June 13, 2002. Observation surveys in September 2002 showed a seatbelt use rate of 92.6 percent. In 1999 in Michigan, the seatbelt use rate was 70 percent. After enactment of the primary seat belt law, usage climbed in 2000 to 84 percent. After the introduction of its primary enforcement law in Alabama, they saw the seatbelt usage rise from 58 percent in 1999 to 79 percent in 2001. Senate Bill 116 creates a mandatory seatbelt law allowing enforcement officers to stop and/or cite an individual when officers observed an unbelted driver or passenger. Mandatory or primary laws are more enforceable than secondary laws. The creation of a mandatory seatbelt law sends a message that Montana views seatbelt use as essential to the operation of a motor vehicle in this state.

#### **Proponents' Testimony:**

**Mike McGrath, Montana Attorney General**, stated that seatbelts save lives. In the last two years, 80 percent of the fatalities in the state were not belted. States that have gone to primary seatbelt laws have had a significant impact in reducing the number of fatal automobile crashes. Major injuries that occur as the result of driving an automobile 70 mph and being involved in a crash, are significant. The National Highway Traffic Safety Administration tells us that the average cost of one of those major injuries is \$1.1 million. Taxpayers are paying for people who do not wear their seatbelts. A significant number of Medicaid cases are a result of automobile crashes.

He remarked that some amendments have been suggested. One is a proposal by the Department of Transportation to allow an officer to cite passengers, not only the driver. Also, the Montana Nurses Association has an amendment. Both he and **SEN. COONEY** do not have any problems with these amendments.

**Captain David Dill, Montana Highway Patrol**, stated that 2002 was an exceptionally bloody year for Montana with 265 deaths. His district had 60 fatalities. In reviewing 34 crashes, there were

37 deaths. Twenty nine of the individuals were ejected or partially ejected. This would be 79 percent. One crash that is typical happened on May 3rd at 11:00 p.m., when two vehicles were approaching the same intersection. One vehicle was a 1990 Dodge pickup and the other was a 1996 Eagle Talon. The Dodge pickup was driven by a female driver. Her passenger was 13 years old. The driver of the Dodge pickup went through a stop sign and collided broadside with the Eagle Talon. The vehicles spun violently. The passenger was ejected out the back window of the Dodge truck as it rolled two and a half times into the barrow pit. The truck landed on top of her and killed her instantly. The driver was also ejected out the driver's side window and the truck nearly hit her. The driver of the Eagle was buckled in and sustained minor injuries.

Seventeen states have primary seatbelt laws. It is estimated that they can reduce their fatalities 10 to 12 percent. This could save 26 lives on a statewide basis. This is a safety issue only. They are not looking for additional causes to go through someone's car.

**Kathy McGowen, Montana Sheriffs and Peace Officers Association,** and the **Montana County Attorneys Association,** rose in support of SB 116. Last September her cousin was one of the 213 who died as a result of one of these accidents. He was a young man who leaves behind two small children.

**Troy McGee, Montana Association of Chiefs of Police,** stated that they continue to support the primary seatbelt law.

**Dr. Michael Spence, State Medical Officer, Department of Public Health and Human Services,** testified in support of SB 116. This spring while traveling he hit a rough spot to avoid a deer and flipped his truck over a 35 foot embankment and rolled it one and a half times before coming to rest against a tree. He found himself hanging upside down in his seatbelt with no injuries whatsoever. Montana had 29.7 fatalities per 100,000 population due to motor vehicle accidents this past year. The national rate is 15.8 percent. We know that 25 percent of motor vehicle accidents will result in death even if the person is belted. If the people who had died were wearing seatbelts and survived the crash, we would have saved in excess of \$66 million on life losses and in injuries over \$520 million in our state alone in one year. This is a total of almost \$600 million.

Legislators are law abiding citizens. He questions whether one of our legislators who passed away recently would still be with us had he been wearing a seatbelt. The seatbelt law is good for the public's health and he is highly supportive of the bill.

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**Sami Butler, Montana Nurses Association,** remarked that nurses across Montana support SB 116 because they know that this bill will save lives and decrease injuries. They also offered an amendment, **EXHIBIT(jus06b01)** to include advanced practice registered nurses (APRNs) in determining whether the individual is unable to wear a seatbelt for medical reasons. APRNs provide primary care for Montanans across the state. Under the current statute, APRNs can issue disabled parking permits and sign death certificates among many other areas and they are certainly qualified to determine whether or not an individual is unable to wear a seatbelt for medical reasons.

**Beta Lovitt, Montana Medical Association,** stated that many of their members are the doctors in the emergency rooms that see the individuals coming in who are suffering from the injuries of a motor vehicle accident where seatbelts were not used. This is a safety issue. The mandatory use of seatbelts will save lives and decrease injuries.

**Dave Galt, Department of the Montana Department of Transportation,** rose in support of SB 116. He offered an amendment dealing with how the infraction would be penalized, **EXHIBIT(jus06b02)**. Under current law, the driver is held responsible for the citation. They would like to make each person of a responsible age responsible for wearing seatbelts. They also felt that the driver should be responsible for making sure that minors, under the age of fifteen, used seatbelts.

**Steve Yeakel, Montana Council for Maternal and Child Health,** claimed that this bill will reduce spiraling health care costs. The decisions made by the parent affect the young child.

**John Flink, Montana Hospital Association,** rose in support of SB 116. They see tragic cases in emergency rooms every day. They believe this bill will help prevent those kinds of tragedies as well as help reduce health care costs.

**Susan Good, Representing Anesthesiologist, Neurosurgeons, and Orthopedic Surgeons,** spoke in support of SB 116. Entire family lives are changed forever following traffic accidents. They are faced with the prospect of caring for those who will never be restored to health and will always be a responsibility to their families and to the system.

**Roger Hagen, Self,** stated that his experiences with seatbelts have been very positive. Last winter he and his wife were returning from Great Falls. They were in two separate vehicles.

He witnessed her hit a patch of black ice and hit the concrete dividers. The car spun 180 degrees and came off of the dividers. She walked away from this incident with one lense out of her glasses and a sore arm from the air bag. She was wearing a seatbelt. He likes his rights but he also likes to know that if someone loses control of their car, they are behind the steering wheel because they are wearing a seatbelt.

**Opponents' Testimony:**

**Steve White, Self**, presented his written testimony, **EXHIBIT (jus06b03)**. His friend was returning to Helena from Bozeman when an oncoming vehicle clipped the side of his car and moved the door post to the back bumper. No other part of the car was damaged. The seatbelt that was across his chest was taken to the back bumper. The result was no visible injury to his friend other than a ruptured aorta. The seatbelt caused so much compression on his chest cavity that his heart exploded. His friend left behind five children. After seeing the car, he is certain that if he had not been wearing a seatbelt, he could have driven the car to the side of road and walked away from this situation. He is not an opponent of this bill for this reason. He is a firm believer that government cannot legislate intelligence.

**Questions from Committee Members and Responses:**

**SEN. GARY PERRY** asked whether it would be a violation of the law for a passenger in a vehicle to place the seatbelt behind the headrest and the seat back. **Captain Dill** stated that this could be enforced as a violation.

**SEN. PERRY** stated that if a passenger in a vehicle reclines the back rest and is using a seatbelt, in the event of a collision, the force of the impact would impel the body forward and the shoulder portion of the belt would come across the passenger's neck. When his wife is driving, he will place the shoulder portion of the belt behind the seat but will keep the belt on his lap. He noted that being pulled over by the highway patrol for such a circumstance does not seem reasonable. **Captain Dill** did not believe the intent of the law would be to review every situation. Currently on newer GM models, the seatbelt is actually built into the seat which would resolve this problem. As an enforcement officer, he would evaluate the situation each time.

**SEN. DAN MCGEE** asked how an officer would implement SB 116. Under what conditions would someone be pulled over for an offense against this bill. **Captain Dill** maintained that this would be very difficult to enforce on the interstate. On a two-lane road,

it would be easier to spot someone not wearing a seatbelt. The majority of the time they are focusing on the driver. He further explained that while on the job at a busy intersection he was parked and waiting for a light to change. A vehicle pulled up next to him with four teenagers in the car. He motioned to the driver to put on his seatbelt. The driver shook his head in negative manner. He could not take any enforcement action at that time. With SB 116 he could enforce the seatbelt law.

**SEN. MCGEE** questioned the situation where there could be five passengers in a car at that same intersection and he observed that the driver was wearing his seatbelt but could not ascertain whether or not the passengers were wearing their seatbelts. He questioned whether this would be probable cause for him to pull the car over to see whether the passengers were wearing their seatbelts. **Captain Dill** claimed that if he could not tell for certain whether or not the passengers were wearing their seatbelts, he would not stop the vehicle.

**SEN. MCGEE** asked **Mr. McGrath** for detailed information that would show conclusively that in the testimony given, seatbelts were the primary cause of loss of life. **Mr. McGrath** believed that they could show statistics where individuals were ejected or partially ejected from the vehicles. Their argument would be that if the persons had been properly using their seatbelts, they would not have been ejected and they may have survived the crash. Of the 265 fatalities last year, 213 fatalities were not wearing seatbelts.

**SEN. MCGEE** requested that other factors, such as speed, alcohol, etc., be itemized in the information supplied. **Mr. McGrath** stated that the information would be forthcoming.

**CHAIRMAN DUANE GRIMES** asked for statistics regarding seatbelts being a hindrance or actually causing the injuries.

**SEN. COONEY** noted that wearing a seatbelt will not guarantee surviving an automobile crash. Wearing a seatbelt improves your chances of surviving a crash as well as cutting down on the injuries sustained. There was a recent car crash a few days ago on Boulder Hill wherein a woman was killed who was wearing her seatbelt. He did not know whether or not there were studies which would show the seatbelt being a hindrance. The information he has provided comes from the National Highway Safety Transportation Administration. The information the Administration provides indicates that this is good practice.

**SEN. MIKE WHEAT** remarked that his understanding was that this legislation was a privacy versus safety issue. **Mr. McGrath** affirmed the statement to be true.

**SEN. WHEAT** remarked that to override the privacy interest, there should be a compelling state interest.

**SEN. PERRY** remarked that there is a seatbelt law already in place. He hasn't heard a great deal of testimony in regard to increasing the safety for individuals by making this offense a primary offense. He referred to 61-9-421 which exempts school buses. He questioned why children riding school buses should be exempt from a seatbelt law. **SEN. COONEY** explained that this particular legislation addressed the situation of passengers in automobiles. Any legislator could introduce legislation mandating seatbelts in buses for school children. It has been discussed in the past.

**Closing by Sponsor:**

**SEN. COONEY** maintained that the proper use of seatbelts will save lives and a great amount of money for society. It is good public policy. This legislation is a reasonable approach. The end result of saving more lives and preventing serious injury outweighs all of the other problems that could be raised.

**EXECUTIVE ACTION ON SB 49**

**Motion:** **SEN. MCGEE** moved that **SB 49 DO PASS.**

**Discussion:**

**Substitute Motion:** **SEN. JEFF MANGAN** moved that **SB 49 BE AMENDED** - 4902. **EXHIBIT(jus06b04)**

**Discussion:**

**Ms. Lane** explained that she worked with Roger Hagen on preparing the amendments. Arnie Olson, Montana Historical Society, affirmed that they also met his concerns. Funeral homes have been incorporated in the amendments. **Sen. Shea** agrees with the amendments.

**CHAIRMAN GRIMES** questioned why the Department of Military Affairs would need access to the information. **SEN. WHEAT** recalled that the Department of Military Affairs needed to receive a copy of the information to help with the funeral benefits.

**SEN. BRENT CROMLEY** remarked that the first part of the amendment would take the issue of military discharge certificates out of Title 2, Chapter 6. He believed it would not be necessary to amend 2-6-401. **Ms. Lane** claimed that this is double coverage but that it would not cause any conflicts.

**Vote:** Motion **carried unanimously.**

**Motion/Vote:** **SEN. MCGEE** moved that **SB 49 DO PASS AS AMENDED.**  
Motion **carried unanimously.**

**EXECUTIVE ACTION ON SB 29**

**Motion:** **SEN. JERRY O'NEIL** moved that **SB 29 DO PASS.**

**Substitute Motion:** **SEN. O'NEIL** made a substitute motion that **SB 29 BE AMENDED.**

**Discussion:**

**SEN. O'NEIL** explained that on page 3, lines 16 and 17, he would delete the language. This would leave only the stricken language in line 14 and 15 on page 1. **Ms. Lane** noted that the title of the bill would need to be changed. On line 6 of the title, it would be necessary to strike "and when determining a parenting plan for a child". On line 7 of the title, the reference to 49-4-212 would need to be removed.

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**SEN. CROMLEY** claimed that the amendment would eliminate the purpose of the bill.

**SEN. O'NEIL** stated that he is not trying to force the court to consider marital misconduct but he is interested in seeing that the court is not prevented from considering marital misconduct. The court is being prevented from something that sometimes needs to be considered. We should not make the court close one eye when a case is being decided.

**SEN. WHEAT** stated that 40-4-202 deals with the division of property and 40-4-212 deals with a parenting plan. The amendment could be accepted and the Committee could still go forward with the changes to the division of property.

**Vote:** Motion **carried unanimously.**

**Motion:** **SEN. O'NEIL** moved that **SB 29 DO PASS AS AMENDED.**

**Discussion:**

**SEN. WHEAT** stated that he could not vote for the bill. The testimony made it clear that amending the statute will generate more litigation for the courts. The court tries very hard to get people to the negotiating table with the best possible attitude to deal with issues related to child custody, the division of assets, and the cost of child support.

**SEN. MCGEE** spoke in support of the bill. He questioned Judge Sherlock and others with regard to the definition of marital misconduct. Their testimony initially was that marital misconduct is not defined in the statute. Current law tells the court to proceed without regard to marital misconduct which must be defined before the court so that they know that they cannot regard it. He believes that marital misconduct is already an idea. When a court is ruling on the dissolution of marriage that affects children and property, the court ought to take into consideration all the factors pertaining to that divorce. The number one problem we have in society today is the fact that the family has taken huge hits. It is no longer the integral factor that it once was. We have an express lane philosophy in marriage dissolutions.

**CHAIRMAN GRIMES** summarized that since marital misconduct is not defined, removing it may have a negligible effect. He raised a concern in that many times the party that may be viewed as having marital misconduct may not necessarily be the bad actor in a marriage. These allegations would leave that person worse off even though they were pushed into other relationships.

**SEN. CROMLEY** stated that marital misconduct can be taken into account in determining the child parenting plan. The court, under 40-4-212, can consider any relevant evidence. The section now being amended, 40-4-202, only deals with division of property. If the words proposed to be stricken had never been in the statute, there would not be a problem. The statute sets out exactly what can be considered in determining the division of the property. He disagrees with the title of the bill.

**SEN. MANGEN** stated that he would be voting against the bill. The most compelling testimony in the hearing was that of the individuals from the Women's Shelter and the Center for Domestic and Sexual Violence. When looking at violent relationships, the testimony included intimidation, blackmail, threatening behavior, and verbal, physical and sexual abuse.

**SEN. WHEAT** claimed that if the language in Section 1 was stricken, the word would be on the street that in regard to

divorce cases the issue of marital misconduct would be at the forefront. Some years ago the Legislature decided to take marital misconduct out of the divorce arena. Based on the testimony in the hearing, no evidence was presented to reverse that policy decision. We have evidence that would support keeping marital misconduct out of the divorce arena.

**SEN. PERRY** stated that most of the objections were in regard to the lines on page 3 of the bill which have now been deleted by amendment. He heard very little, if any, objection to the deletion of marital misconduct in Section 1. Expert opponents testified that marital misconduct can, under existing law, be considered when determining parental rights. He questioned why it would not be logical to consider marital misconduct when determining division of property.

**CHAIRMAN GRIMES** thought the legislation would have a minimal impact. He was concerned that Section 1 was not properly discussed in the hearing. Everyone focused on Section 2. He also had concerns with the title of the bill. He complimented **SEN. O'NEIL** for trying to strengthen marriages. It is incredibly apparent that the lack of cohesiveness in a home has devastating effects.

**SEN. AUBYN CURTISS** spoke in support of the bill. The issue of hurting children in this process is a red herring. The bottom line is parents facing some humiliation. Expediting the system whereby marriages can be resolved relieves people of facing up to their personal responsibilities.

**SEN. O'NEIL** remarked that in regard to the title of the bill, under current law he doesn't believe that there is any language stating that marital misconduct cannot be considered when preparing a parenting plan. At one time it was necessary to find fault before a divorce was granted. We have closed off the right of one party and are allowing the other party to have

**{Tape: 3; Side: A}**

all the power. The only way to have a fair justice system is to have the court hear the full story. When the court is prevented from hearing half the story, it cannot make a fair decision. The court can always decide what testimony is relevant. If it is relevant, the present law stops the parties from bringing it before the court. That is wrong.

**SEN. PERRY** stated that the witnesses who testified stated that this would be a detriment to women's rights. He believed this

would hold the same weight the other direction. If the husband was guilty of marital misconduct, this would benefit the wife.

**Ms. Lane** clarified that this would be detrimental to women's rights in that they most often are the victims in abusive and violent situations. In such a situation, a man who is violent or abusive can make allegations against the woman whether or not they are founded. This gives them another way to use the court against the already victimized woman.

**Vote:** Motion **failed 4-5 on roll call vote.**

**Motion/Vote:** SEN. GRIMES moved that **SB 29 BE INDEFINITELY POSTPONED. Motion carried 5-4.**

**ADJOURNMENT**

Adjournment: 11:55 A.M.

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SEN. DUANE GRIMES, Chairman

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JUDY KEINTZ, Secretary

DG/JK

**EXHIBIT** (jus06bad)